

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCELL JONES,

No. 2:22-cv-01707 DC SCR P

Plaintiff,

v.

B. BROWNEN, et al.,

ORDER AND PROTECTIVE ORDER

Defendants.

Plaintiff is a state prisoner proceeding pro se in this civil rights action under 42 U.S.C. § 1983. Before the court is plaintiff's motion to compel production of documents. (ECF No. 41.) For the reasons described below, plaintiff's motion is denied without prejudice.

**PLAINTIFF'S MOTION TO COMPEL**

**I. Background**

Plaintiff's complaint alleges that defendant Brownen falsely documented another inmate's contraband as being found in plaintiff's cell. (ECF No. 1.) During the ensuing disciplinary hearing, plaintiff alleges that defendant Rangel ignored plaintiff's evidence and would not let him call witnesses. (*Id.*) Defendant Rangel found plaintiff guilty, which affected plaintiff's privileges, programming, and credit. (*Id.*) In the screening order dated April 10, 2023, the previously assigned magistrate judge determined that plaintiff's complaint stated a cognizable

1 First Amendment retaliation claim against defendant Brownen and a cognizable Fourteenth  
2 Amendment Due Process claim against defendant Rangel. (ECF No. 11.)

3 On November 8, 2024, the undersigned granted plaintiff's motion to modify the discovery  
4 and scheduling order and set a discovery deadline of January 7, 2025, and a dispositive motion  
5 deadline of March 8, 2025. (ECF No. 40.) Sometime after the order modifying the discovery and  
6 scheduling order, plaintiff propounded a single request for production ("RFP") on defendants:

7 Plaintiff hereby request [sic] the production of documents filed against Defendant's for,  
8 but not limited to; abuse of authority, misconduct, racism, out of bounds, over familiar,  
conduct unbecoming, so on and so forth. All documentation concerning infractions,  
9 alleged and or proved to be true.

10 (ECF No. 42 at 2.) Defendants responded to plaintiff's RFP on December 23, 2024. (Declaration  
11 of Alexandra Faura ("Faura Decl.") ¶ 2, ECF No. 42-1 at 1.) Defendants raised myriad objections  
12 but appear to have produced two responsive grievance documents (twelve pages total): (1) CDCR  
13 602-1 Grievance Log No. 138859; and (2) CDCR 602-2 Appeal of Grievance Log No. 138859.  
14 (Faura Decl., Exh. 1, ECF No. 42-1 at 6.)

15 Plaintiff filed the instant motion to compel production of documents on January 21, 2025.  
16 (ECF No. 41.) Plaintiff alleges that defendants have failed to produce the requested documents,  
17 which are "critical to establishing a pattern of misconduct by both defendants." (*Id.* at 1-2.)  
18 Defendants submitted an opposition on February 11, 2025, arguing that plaintiff's RFP is  
19 overbroad as to time and scope, not relevant to any party's claims or defenses, and  
20 disproportionate to the needs of the case, among other objections. (See *id.*) Plaintiff did not  
21 reply. On March 7, 2025, the undersigned granted defendants' request (ECF No. 43) to stay the  
22 dispositive motion deadline pending resolution of plaintiff's motion to compel. (ECF No. 44.)

## 23 II. Legal Standard

24 Under Rule 37 of the Federal Rules of Civil Procedure, "a party seeking discovery may  
25 move for an order compelling an answer, designation, production, or inspection." Fed. R. Civ. P.  
26 37(a)(3)(B). Such motion may be made if "a party fails to produce documents or fails to respond  
27 that inspection will be permitted – or fails to permit inspection – as required under Rule 34." Fed.  
28 R. Civ. P. 37(a)(3)(B)(iv). "District courts have 'broad discretion to manage discovery and to

1 control the course of litigation under Federal Rule of Civil Procedure 16.”” Hunt v. County of  
2 Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting Avila v. Willits Env'tl. Remediation Trust,  
3 633 F.3d 828, 833 (9th Cir. 2011)).

4 The party moving to compel bears the burden of informing the court (1) which discovery  
5 requests are the subject of the motion to compel, (2) which of the responses are disputed, (3) why  
6 the party believes the response is deficient, (4) why any objections are not justified, and (5) why  
7 the information sought through discovery is relevant to the prosecution of this action. McCoy v.  
8 Ramirez, No. 1:13-cv-1808 MJS PC, 2016 WL 3196738, at \*1 (E.D. Cal. June 9, 2016); Ellis v.  
9 Cambra, No. 1:02-cv-5646 AWI SMS PC, 2008 WL 860523, at \*4 (E.D. Cal. Mar. 27, 2008).  
10 Thereafter, the party opposing discovery has the burden of showing that the discovery should be  
11 prohibited, and the burden of clarifying, explaining or supporting its objections.” Bryant v.  
12 Ochoa, No. 07-cv-200 JM (PCL), 2009 WL 1390794, at \*1 (S.D. Cal. May 14, 2009) (citations  
13 omitted).

14 **III. Discussion**

15 Plaintiff has failed to meet the initial burden required on a motion to compel. Plaintiff’s  
16 motion does not identify the discovery request subject to the motion or which responses are  
17 disputed. Nor does the motion explain why the two grievances that defendants did produce are  
18 deficient or why defendants’ objections are not justified. Further, plaintiff’s motion contains  
19 several procedural deficiencies. Plaintiff failed to certify that he attempted to confer with  
20 defendants’ counsel prior to filing his motion as required by Federal Rule of Civil Procedure  
21 37(a)(1) and Local Rule 251(b) and filed the motion after the discovery cut-off date in violation  
22 of the court’s discovery and scheduling orders. (See ECF No. 33 at 5, ¶ 6; ECF No. 40 at 2.)

23 For these reasons, plaintiff’s motion to compel is denied without prejudice. Because the  
24 dispositive motion deadline is stayed (see ECF No. 44), the court will grant plaintiff an  
25 opportunity to fix the issues with the motion to compel. See Lopez v. Chertoff, No. cv-07-1566  
26 LEW, 2009 WL 1575214, at \*1 (E.D. Cal. June 2, 2009) (exercising discretion to hear motion to  
27 compel filed after discovery cut-off where “there are no dispositive motions pending”). Plaintiff  
28 shall have thirty (30) days from the date of service of this order to file a motion to compel that

1 complies with the requirements laid out above. The discovery deadline will be extended solely to  
2 allow plaintiff to file the motion. The dispositive motion deadline shall remain stayed. Plaintiff  
3 is advised that a failure to file a renewed motion to compel will result in an order closing  
4 discovery and setting a dispositive motion deadline.

5 Without ruling on defendants' substantive objections, the court advises defendants that  
6 future requests for in camera review pursuant to official information privilege (OIP)<sup>1</sup> must be  
7 supported by a declaration from a responsible official with personal knowledge of the  
8 governmental or privacy issues that would be threatened by disclosure. See Soto v. City of  
9 Concord, 162 F.R.D. 603, 613 (N.D. Cal. 1995) (quoting Kelly v. City of San Jose, 114 F.R.D.  
10 653, 661 (N.D. Cal. 1987)). A court's duty to balance the parties' interests in disclosure of  
11 official information is not triggered until the party opposing disclosure makes such a "substantial  
12 threshold showing." (Id.)

13 **CONCLUSION**

14 Accordingly, IT IS HEREBY ORDERED:

- 15 1. Plaintiff's motion to compel (ECF No. 41) is denied without prejudice.
- 16 2. Plaintiff shall have thirty (30) days from the service of this order to file a renewed  
17 motion to compel as outlined above. The discovery deadline shall be extended solely for this  
18 purpose.
- 19 3. Plaintiff is advised that a failure to file a renewed motion to compel will result in  
20 an order closing discovery and setting a dispositive motion deadline.

21 DATED: March 18, 2025



22  
23 SEAN C. RIORDAN  
24 UNITED STATES MAGISTRATE JUDGE  
25  
26

27 <sup>1</sup> Defendants' request for in camera review appears to invoke the OIP based on their citation to  
28 Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033-34 (9th Cir. 1990), a case that concerned  
whether police personnel files were appropriately shielded under the OIP. (See id.)